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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Note verbale dated 3 February 1983 from the Permanent Mission of the Republic of Indonesia to the Secretary-General

The Permanent Mission of the Republic of Indonesia to the United Nations Office and other International Organizations at Geneva presents its compliments to the Secretary-General of the United Nations and has the honour to kindly request the latter that the attached Memorandum dated 3 February 1983 be circulated as an official document of the Commission on Human Rights under item 9 of the Agenda of the thirty-ninth session of the Commission.

GE.83-10689

MEMORANDUM

1. A draft resolution on the "Question of East Timor" is submitted to the thirty-ninth session of the United Nations Commission on Human Rights by the Sub-Commission on Prevention of Discrimination and Protection of Minorities as contained in the Report of the Sub-Commission on its thirty-fifth session (ECOSOC Document No. E/CN.4/1983/4 dated 29 September 1982). As is known the Sub-Commission consists of members serving in their personal capacity.

2. The basic position of the Government of the Republic of Indonesia on the so-called "Question of East Timor" is well-known to the Members of the United Nations. Indonesia is categorically opposed to any kind of discussions or deliberations by the United Nations, its specialized agencies or any other international organizations or bodies, of issues related to the political or juridical status of East Timor after the people of East Timor exercised the right to self-determination and opted for integration with the Republic of Indonesia on 17 July 1976, in accordance with the United Nations General Assembly resolutions 1514 (XV), 1541 (XV) and 2625 (XXV). Any of such discussions or deliberations therefore constitutes an intervention in matters "which are essentially within the domestic jurisdiction" of a Member of the United Nations in violation of the provisions of Article 2, paragraph 7 of the United Nations Charter.

3. Consequently, the Permanent Representative of the Republic of Indonesia to the United Nations and other International Organizations at Geneva is opposed to the consideration and adoption by the Commission on Human Rights of the draft resolution on the "Question of East Timor" submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities referred to in paragraph 1 (hereinafter referred to as "the Draft Resolution"). Any action by the Commission on Human Rights to that effect will constitute an interference with matters within the domestic jurisdiction of the Republic of Indonesia in contravention with the provisions of Article 2, paragraph 7 of the United Nations Charter. The Permanent Representative of the Republic of Indonesia expresses its profound regret and concern that such a politically motivated draft resolution is submitted to the Commission on Human Rights.

4. The paragraphs of the Draft Resolution have apparently been borrowed from the General Assembly resolutions on the same "question" adopted prior to 1982 and rejected by Indonesia. Both the Draft Resolution of the Sub-Commission and the General Assembly resolutions reflect political manoeuvrings aimed at discrediting the Republic of Indonesia and enabling the former colonial power to regain authority over East Timor. It is therefore evident that the authors of the Draft Resolution do not have any particular concern over issues relating to human rights, and instead they are in fact embarking on a senseless political adventure.

5. The records of the General Assembly have clearly shown year after year, session after session, that the effort by certain quarters to deceive the world, by stating that the people of East Timor has not exercised the right to self-determination, has lost its credibility and support. Realizing such an unfavourable development, they submitted to the thirty-seventh session of the General Assembly (1982) a Draft Resolution (later adopted as resolution 37/30 of 23 November 1982 which Indonesia also rejected) which no longer contains operative paragraphs incorporated in previous General Assembly resolutions, namely:

(a) paragraph reaffirming "the inalienable right of the people of East Timor to self-determination and independence";

(b) paragraph declaring that "the people of East Timor must be enabled freely to determine their own future"; and

(c) paragraph referring to Portugal as the "administering Power" of East Timor.

Their absence in the operative part of resolution 37/30 of 1982 indicates in clear terms that the authors of that resolution were now convinced that their effort to deceive the world had failed. More and more countries are becoming increasingly aware of the factual situation with regard to East Timor where the right of the people to self-determination has been duly exercised in 1976 in accordance with the General Assembly resolutions 1514 (XV), 1541 (XV) and 2625 (XXV). The voting record on resolution 37/30 of 1982 is an authoritative evidence of such a development. It would be an anomaly, therefore, if the Commission on Human Rights considered and adopted a resolution incorporating those substantive paragraphs expressing false ideas and conceptions already discarded and rejected by the United Nations General Assembly.

6. Without prejudice to the basic position of Indonesia on the so-called "Question of East Timor", particularly the political and juridical status of East Timor, the Permanent Representative of the Republic of Indonesia deems it necessary to present his views on specific aspects of the Draft Resolution as follows:

(a) Paragraph 1:

(i) The paragraph "reaffirms" the inalienable right of the people of East Timor to self-determination and independence. This is obviously irrelevant. The people of East Timor has never been deprived of its right to self-determination. The people of East Timor has in fact exercised that right when they decided on 17 July 1976 to choose independence through integration with the Republic of Indonesia.

(ii) The paragraph refers only to resolution 1514 (XV) of 14 December 1960 and deliberately excludes reference to resolution 1541 (XV) of 15 December 1970 and resolution 2625 (XXV) of 24 October 1970. Refusal to also consider resolution 1541 (XV) as relevant to "Question of East Timor" is legally inappropriate and politically prejudicial. While the exercise of the right to self-determination should indeed be based on resolution 1514 (XV), the people of East Timor equally cannot be denied their right to choose independence through integration with an independent State in accordance with principles VI, VIII and IX of resolution 1541 (XV) and as confirmed by the relevant provisions of resolution 2625 (XXV).

(b) Paragraph 2:

The paragraph contains a statement that the people of East Timor "must be enabled freely to determine their own future on the basis of the relevant General Assembly resolutions and the United Nations human rights instruments". This paragraph tries to give the impression that the decision of the people of East Timor to integrate East Timor with Indonesia was made undemocratically and in a manner inconsistent with the relevant General Assembly resolutions

and the United Nations human rights instruments. In so doing, the paragraph completely ignores the historical facts relevant to the question. The integration of East Timor with Indonesia is based on the popular wish of the people of East Timor democratically expressed through the duly elected People's Assembly of East Timor at its session on 31 May 1976 in Dili, East Timor, witnessed by members of the diplomatic corps accredited to Jakarta as well as representatives of Indonesian and foreign press. Such an exercise of the right to self-determination is, as has been indicated in the preceding paragraphs, in full accordance with the relevant General Assembly resolutions, which allow different processes of decolonization, including integration with an independent State.

It should be noted in this connection that the General Assembly resolution 1541 (XV) contains a principle (Principle IX (b)) regarding process of decolonization through integration with an independent State, stating that "the United Nations could, when it deems it necessary, supervise these processes". Despite the non-mandatory nature of the participation of the United Nations in the process of decolonization of East Timor, the Provisional Government of East Timor and the Indonesian Government had invited the United Nations to be involved in the process. Regrettably there was no positive response from the United Nations.

(c) Paragraph 3:

(i) In this paragraph, the authors again make another effort to distort the facts and mislead the readers by repeating the allegation that the people of East Timor has not freely and fully exercised the right to self-determination.

In addition to such a repetition, the paragraph also mentions that Portugal is the "administering Power". Nothing is further from the truth. Portugal has lost any right to claim the status of "administering Power" in 1975, when Portugal on its own volition deliberately relinquished her responsibility and duties as the administering Power by abandoning the territory after inciting civil war and leaving thousands of arms to the party of her own creation, "FRETILIN". It would therefore be legally inappropriate and politically unrealistic to consider Portugal as the administering Power. Even FRETILIN, henchmen of the colonial Power, had in fact denied Portugal as the administering Power when it unilaterally declared the so-called "independence" of East Timor on 28 November 1975 at the expense of the majority of people of East Timor as represented by four political parties, namely APODETI, UDT, KOTA and TRABALHISTA.

(ii) The paragraph refers to "the representatives of the East Timorese people". The only legitimate representatives of the people of East Timor were the four political parties, namely APODETI, UDT, KOTA and TRABALHISTA. On 30 November 1975 they declared, on behalf of the people of East Timor, the independence of East Timor through integration with Indonesia. This declaration was followed by a formal expression of the wish of the people of East Timor for integration with Indonesia (decision of the duly elected People's Assembly of East Timor on 31 May 1976). To call upon the representatives of the East Timorese people and the other "interested parties" to co-operate fully with the United Nations "to guaranteeing the free and full exercise of the right to self-determination of the people of East Timor" is therefore absurd and constitutes an outright insult to the people of East Timor.

(d) Paragraph 4:

The paragraph mentions "the suffering of the people of East Timor as a result of the situation now prevailing in East Timor", on which deepest concern is expressed. The authors of the Draft Resolution apparently have included this paragraph simply to inject whatever issue they thought could give the impression that the Draft Resolution addresses itself to human rights issues, and not to political issues. Such a desperate attempt is doomed to failure since the Draft Resolution does not and is not able to reveal what is meant by the "suffering" of the East Timorese people or the "situation now prevailing in the Territory".

The contrary situation is now in fact prevailing in East Timor, as clearly substantiated and corroborated by reports and findings by such competent and prestigious United Nations agencies and international organizations as the UNHCR, UNICEF, ICRC, CRS (Catholic Relief Services) as well as foreign dignitaries, members of diplomatic corps accredited to Jakarta, foreign prominent figures and Indonesian and foreign correspondents. They have visited East Timor and have been given free access to any source of information and to all parts of the Territory. Many of the United Nations agencies and international organizations have even been operating in East Timor since 1979. Their reports and findings contradict the allegation made in the paragraph that the people of East Timor is suffering as a result of the situation now prevailing in East Timor. They show evidence that there is no suffering, no "famine" as alleged by those who are waging an anti-Indonesia campaign, nor is there violation of human rights. The reports and findings note with appreciation the serious efforts of the Central Government of Indonesia and the East Timor Provincial Government in the development of East Timor for the benefit of the people. The people of East Timor have even exercised their political rights in the General Election held on 4 May 1982 by electing their own representatives in the House of People's Representatives in Jakarta and in the Provincial House of People's Representatives in Dili. Many of the reports and findings even acknowledge the fact that the general situation and condition in East Timor are better than those during the period under the Portuguese colonial administration. Those reports and findings therefore constitute authoritative evidence that paragraph 4 of the Draft Resolution contains a malicious lie.

(e) Paragraph 5:

The paragraph calls upon all parties concerned "to facilitate the entry into the territory of international aid to alleviate the suffering of the people of East Timor". The authors of the Draft Resolution attempt to create an impression from this paragraph that Indonesia is restricting the entry of humanitarian aid. As the preceding paragraphs have shown, such an allegation is simply false and without basis whatsoever. The Indonesian Government has always fully co-operated with the United Nations specialized agencies and international organizations such as UNICEF, UNHCR, ICRC and CRS and has given them access to all parts of East Timor in order to facilitate their humanitarian activities. This fact has been confirmed by the United Nations specialized agencies and international organizations in their reports as well as by visitors to East Timor, including representatives of foreign Governments and responsible media.

It should be emphasized in this connection that the humanitarian activities of the United Nations specialized agencies and international organizations in East Timor are not to alleviate the "suffering" of the people of East Timor, since it was earlier confirmed that there is no such suffering. Instead, such activities are being carried out to complement the Indonesian Government development efforts in East Timor to improve the well-being of the people in general.

7. It is evident from the preceding paragraphs that the Draft Resolution is politically motivated and submitted with manifestly political objectives detrimental to a Member of the United Nations, i.e. Indonesia. The Draft Resolution has failed even to give some semblance of a human rights resolution by alleging without basis that the East Timor people is "suffering" as a result of "the situation now prevailing in East Timor". Such an allegation is totally false and contrary to the objective findings of third parties who have visited East Timor, including those who made such visits very recently. It is abundantly clear, therefore, that the Draft Resolution does not concern itself with real issues of human rights. For these reasons, the Permanent Representative of the Republic of Indonesia is of the view that it will be ultra vires for the Commission on Human Rights to consider and adopt the Draft Resolution. The same conclusion can also be drawn from the fact that the consideration and adoption of the Draft Resolution will result in a legally unjustified duplication of the work of the General Assembly. The Permanent Representative of the Republic of Indonesia therefore expresses its strong rejection of the Draft Resolution and its opposition to its consideration and adoption by the Commission.

Geneva, 3 February 1983